

105TH CONGRESS  
1ST SESSION

# S. 900

To provide for sentencing enhancements and amendments to the Federal Sentencing Guidelines for offenses relating to the abuse and exploitation of children, and for other purposes.

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## IN THE SENATE OF THE UNITED STATES

JUNE 12, 1997

Mr. FEINGOLD (for himself and Mr. DEWINE) introduced the following bill;  
which was read twice and referred to the Committee on the Judiciary

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## A BILL

To provide for sentencing enhancements and amendments to the Federal Sentencing Guidelines for offenses relating to the abuse and exploitation of children, and for other purposes.

1       *Be it enacted by the Senate and House of Representa-*  
2       *tives of the United States of America in Congress assembled,*

3       **SECTION 1. SHORT TITLE.**

4       This Act may be cited as the “Child Exploitation  
5       Sentencing Enhancement Act of 1997”.

6       **SEC. 2. FINDINGS.**

7       Congress finds that—

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1           (1) the sexual exploitation of children, including  
2           the sexual abuse of minors, and illegal sexual  
3           activity with minors, poses a significant threat to the  
4           health, safety, and well-being of children in the  
5           United States;

6           (2) there is a compelling governmental interest  
7           in preserving the health and safety of children, and  
8           the prevention and elimination of the sexual abuse  
9           and exploitation of children serves that interest;

10          (3) if computers are used to facilitate the sex-  
11          ual abuse or exploitation of children—

12                (A) by facilitating the contact, persuasion,  
13                inducement, enticement, or coercion of a child  
14                in order to exploit or engage in illegal sexual  
15                activity with that child, the risk of harm is  
16                magnified and more dangerous to children be-  
17                cause—

18                       (i) the use of a computer allows the  
19                       sexual offender to target and reach a wider  
20                       range of potential victims than would oth-  
21                       erwise be possible if direct physical pres-  
22                       ence and contact with the child was nec-  
23                       essary to initiate and facilitate the crime;  
24                       and

1 (ii) the use of a computer allows the  
2 sexual offender to avoid more readily de-  
3 tection by law enforcement officials, as law  
4 enforcement officials may lack the re-  
5 sources or training necessary to identify,  
6 pursue, and apprehend those individuals  
7 who target children for sexual exploitation  
8 through the use of computers; and

9 (B) the use of a computer allows a sexual  
10 offender to avoid revealing, or to knowingly  
11 conceal from a potential victim, the actual iden-  
12 tity of the offender (including the offender's  
13 sex, age, and name) and therefore allows the of-  
14 fender to gain more readily the confidence of an  
15 unsuspecting child;

16 (4) there is a compelling governmental interest  
17 in prohibiting repeated and continuing patterns of  
18 child sexual exploitation through extended incarcer-  
19 ation for offenders who use computers to facilitate  
20 the sexual exploitation of a child or to sexually ex-  
21 ploit a child;

22 (5) individuals who engage in a repeated and  
23 continuing pattern of sexual abuse or exploitation of  
24 children over a period of time are particularly harm-  
25 ful to children;

1           (6) it is important to pay special attention to  
2           the identification of those offenders who show the  
3           greatest risk of continuing victimizing of children, so  
4           that the offenders may be incapacitated through ex-  
5           tended incarceration;

6           (7) consistently, experts in the field of criminal  
7           justice find that criminal history, especially a history  
8           of sexual offenses, is the most important and accu-  
9           rate predictor of whether an individual might com-  
10          mit a sexual offense in the future;

11          (8)(A) the report issued by the United States  
12          Sentencing Commission in 1996 entitled “Sex Of-  
13          fenses Against Children: Findings and Recommenda-  
14          tions Regarding Federal Penalties” contains a re-  
15          view of the cases of all Federal offenders sentenced  
16          for offenses of pornography and transportation of  
17          minors for illegal sexual activity and criminal sexual  
18          abuse;

19          (B) in the report, the United States Sentencing  
20          Commission found that—

21               (i) in approximately 20 percent of the  
22               cases reviewed by the United States Sentencing  
23               Commission, the defendant had a prior sex-re-  
24               lated conviction;

1 (ii) 64 percent of the defendants convicted  
 2 under sexual abuse guidelines who had prior  
 3 convictions for sexual offenses had committed  
 4 sexual crimes against children; and

5 (iii) for all categories of sexual abuse, the  
 6 probability that a child was the prior victim of  
 7 such a defendant was high (ranging from a 50  
 8 to 70 percent probability);

9 (9) incapacitation through extended incarcer-  
 10 ation will prevent those offenders who engage in a  
 11 repeated and continuing pattern of sexual exploi-  
 12 tation of children from continuing to commit the hei-  
 13 nous sexual offenses against children; and

14 (10) the prevention and elimination of the sex-  
 15 ual exploitation of children provides a compelling  
 16 governmental interest in prohibiting repeated and  
 17 continuing patterns of child sexual exploitation  
 18 through extended incarceration.

19 **SEC. 3. DEFINITIONS.**

20 In this Act:

21 (1) CHILD; CHILDREN.—The term “child” or  
 22 “children” means a minor or minors of an age speci-  
 23 fied in the applicable provision of title 18, United  
 24 States Code, that is subject to review under this Act.

1           (2) MINOR.—The term “minor” means any in-  
 2           dividual who has not attained the age of 18, except  
 3           that, with respect to references to section 2243 of  
 4           title 18, United States Code, the term means an in-  
 5           dividual described in subsection (a) of that section.

6 **SEC. 4. INCREASED PENALTIES FOR USE OF A COMPUTER**  
 7                           **IN THE SEXUAL ABUSE OR EXPLOITATION OF**  
 8                           **A CHILD.**

9           Pursuant to the authority granted to the United  
 10          States Sentencing Commission under section 994(p) of  
 11          title 28, United States Code, the United States Sentencing  
 12          Commission shall—

13               (1) review the Federal Sentencing Guidelines on  
 14               aggravated sexual abuse under section 2241 of title  
 15               18, United States Code, sexual abuse under section  
 16               2242 of title 18, United States Code, sexual abuse  
 17               of a minor or ward under section 2243 of title 18,  
 18               United States Code, coercion and enticement of a ju-  
 19               venile under section 2422(b) of title 18, United  
 20               States Code, and transportation of minors under  
 21               section 2423 of title 18, United States Code; and

22               (2) upon completion of the review under para-  
 23               graph (1), promulgate amendments to the Federal  
 24               Sentencing Guidelines to increase penalties if the de-  
 25               fendant used a computer with the intent to per-

1       suade, induce, entice, or coerce a child of an age  
 2       specified in the applicable provision referred to in  
 3       paragraph (1) to engage in any prohibited sexual ac-  
 4       tivity.

5       **SEC. 5. INCREASED PENALTIES FOR KNOWING MISREPRE-**  
 6                               **SENTATION IN THE SEXUAL ABUSE OR EX-**  
 7                               **PLOITATION OF A CHILD.**

8       Pursuant to the authority granted to the United  
 9       States Sentencing Commission under section 994(p) of  
 10      title 28, United States Code, the United States Sentencing  
 11      Commission shall—

12               (1) review the Federal Sentencing Guidelines on  
 13      aggravated sexual abuse under section 2241 of title  
 14      18, United States Code, sexual abuse under section  
 15      2242 of title 18, United States Code, sexual abuse  
 16      of a minor or ward under section 2243 of title 18,  
 17      United States Code, coercion and enticement of a ju-  
 18      venile under section 2422(b) of title 18, United  
 19      States Code, and transportation of minors under  
 20      section 2423 of title 18, United States Code; and

21               (2) upon completion of the review under para-  
 22      graph (1), promulgate amendments to the Federal  
 23      Sentencing Guidelines to increase penalties if the de-  
 24      fendant knowingly misrepresented the actual identity  
 25      of the defendant with the intent to persuade, induce,

1 entice, or coerce a child of an age specified in the  
2 applicable provision referred to in paragraph (1) to  
3 engage in a prohibited sexual activity.

4 **SEC. 6. INCREASED PENALTIES FOR PATTERN OF ACTIVITY**  
5 **OF SEXUAL EXPLOITATION OF CHILDREN.**

6 Pursuant to the authority granted to the United  
7 States Sentencing Commission under section 994(p) of  
8 title 28, United States Code, the United States Sentencing  
9 Commission shall—

10 (1) review the Federal Sentencing Guidelines on  
11 criminal sexual abuse, the production of sexually ex-  
12 plicit material, the possession of materials depicting  
13 a child engaging in sexually explicit conduct, coer-  
14 cion and enticement of minors, and the transpor-  
15 tation of minors; and

16 (2) upon completion of the review under para-  
17 graph (1), promulgate amendments to the Federal  
18 Sentencing Guidelines to increase penalties applica-  
19 ble to the offenses referred to in paragraph (1) in  
20 any case in which the defendant engaged in a pat-  
21 tern of activity involving the sexual abuse or exploi-  
22 tation of a minor.



1 **SEC. 7. REPEAT OFFENDERS; INCREASED MAXIMUM PEN-**  
 2 **ALTIES FOR TRANSPORTATION FOR ILLEGAL**  
 3 **SEXUAL ACTIVITY AND RELATED CRIMES.**

4 (a) REPEAT OFFENDERS.—

5 (1) CHAPTER 117.—

6 (A) IN GENERAL.—Chapter 117 of title  
 7 18, United States Code, is amended by adding  
 8 at the end the following:

9 **“§ 2425. Repeat offenders**

10 “(a) IN GENERAL.—Any person described in this  
 11 subsection shall be subject to the punishment under sub-  
 12 section (b). A person described in this subsection is a per-  
 13 son who violates a provision of this chapter, after one or  
 14 more prior convictions—

15 “(1) for an offense punishable under this chap-  
 16 ter or chapter 109A or 110; or

17 “(2) under any applicable law of a State relat-  
 18 ing to conduct punishable under this chapter or  
 19 chapter 109A or 110.

20 “(b) PUNISHMENT.—A violation of a provision of this  
 21 chapter by a person described in subsection (a) is punish-  
 22 able by a term of imprisonment of a period not to exceed  
 23 twice the period that would otherwise apply under this  
 24 chapter.”.

25 (B) CONFORMING AMENDMENT.—The  
 26 chapter analysis for chapter 117 of title 18,

1 United States Code, is amended by adding at  
 2 the end the following:

“2425. Repeat offenders.”.

3 (2) CHAPTER 109A.—Section 2247 of title 18,  
 4 United States Code, is amended to read as follows:

5 **“§ 2247. Repeat offenders**

6 “(a) IN GENERAL.—Any person described in this  
 7 subsection shall be subject to the punishment under sub-  
 8 section (b). A person described in this subsection is a per-  
 9 son who violates a provision of this chapter, after one or  
 10 more prior convictions—

11 “(1) for an offense punishable under this chap-  
 12 ter or chapter 110 or 117; or

13 “(2) under any applicable law of a State relat-  
 14 ing to conduct punishable under this chapter, or  
 15 chapter 110 or 117.

16 “(b) PUNISHMENT.—A violation of a provision of this  
 17 chapter by a person described in subsection (a) is punish-  
 18 able by a term of imprisonment of a period not to exceed  
 19 twice the period that would otherwise apply under this  
 20 chapter.”.

21 (b) INCREASED MAXIMUM PENALTIES FOR TRANS-  
 22 PORTATION FOR ILLEGAL SEXUAL ACTIVITY AND RELAT-  
 23 ED CRIMES.—

1           (1) TRANSPORTATION GENERALLY.—Section  
2       2421 of title 18, United States Code, is amended by  
3       striking “five” and inserting “10”.

4           (2) COERCION AND ENTICEMENT OF MINORS.—  
5       Section 2422 of title 18, United States Code, is  
6       amended—

7           (A) in subsection (a), by striking “five”  
8       and inserting “10”; and

9           (B) in subsection (b), by striking “10” and  
10       inserting “15”.

11          (3) TRANSPORTATION OF MINORS.—Section  
12       2423 of title 18, United States Code, is amended—

13           (A) in subsection (a), by striking “ten”  
14       and inserting “15”; and

15           (B) in subsection (b), by striking “10” and  
16       inserting “15”.

17          (c) AMENDMENT OF SENTENCING GUIDELINES.—  
18       Pursuant to the authority granted to the United States  
19       Sentencing Commission under section 994(p) of title 28,  
20       United States Code, the United States Sentencing Com-  
21       mission shall—

22           (1) review the Federal Sentencing Guidelines  
23       relating to chapter 117 of title 18, United States  
24       Code; and

1           (2) upon completion of the review under para-  
2           graph (1), promulgate such amendments to the Fed-  
3           eral Sentencing Guidelines as are necessary to pro-  
4           vide for the amendments made by this section.

5 **SEC. 8. CLARIFICATION OF DEFINITION OF DISTRIBUTION**  
6 **OF PORNOGRAPHY.**

7           Pursuant to the authority granted to the United  
8           States Sentencing Commission under section 994(p) of  
9           title 28, United States Code, the United States Sentencing  
10          Commission shall—

11           (1) review the Federal Sentencing Guidelines  
12           relating to the distribution of pornography covered  
13           under chapter 110 of title 18, United States Code,  
14           relating to the sexual exploitation and other abuse of  
15           children; and

16           (2) upon completion of the review under para-  
17           graph (1), promulgate such amendments to the Fed-  
18           eral Sentencing Guidelines as are necessary to clar-  
19           ify that the term “distribution of pornography” ap-  
20           plies to the distribution of pornography—

21                   (A) for monetary remuneration; or

22                   (B) for a nonpecuniary interest.

1 **SEC. 9. DIRECTIVE TO THE UNITED STATES SENTENCING**  
2 **COMMISSION.**

3 In carrying out this Act, the United States Sentenc-  
4 ing Commission shall—

5 (1) with respect to any action relating to the  
6 Federal Sentencing Guidelines subject to this Act,  
7 ensure reasonable consistency with other guidelines  
8 of the Federal Sentencing Guidelines; and

9 (2) with respect to an offense subject to the  
10 Federal Sentencing Guidelines, avoid duplicative  
11 punishment under the guidelines for substantially  
12 the same offense.

13 **SEC. 10. AUTHORIZATION FOR GUARDIANS AD LITEM.**

14 (a) AUTHORIZATION OF APPROPRIATIONS.—There  
15 are authorized to be appropriated to the Department of  
16 Justice, for the purpose specified in subsection (b), such  
17 sums as may be necessary for each of fiscal years 1998  
18 through 2001.

19 (b) PURPOSE.—The purpose specified in this sub-  
20 section is the procurement, in accordance with section  
21 3509(h) of title 18, United States Code, of the services  
22 of individuals with sufficient professional training, experi-  
23 ence, and familiarity with the criminal justice system, so-  
24 cial service programs, and child abuse issues to serve as  
25 guardians ad litem for children who are the victims of,  
26 or witnesses to, a crime involving abuse or exploitation.

1 **SEC. 11. APPLICABILITY.**

2       This Act and the amendments made by this Act shall  
3 apply to any action that commences on or after the date  
4 of enactment of this Act.

